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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,

12 Plaintiff,

Cr. S-97-0461 DFL

13 v.

ORDER

14 THOMAS MARTIN SUKUP,

15 Defendant.
16 _____/

17 On March 9, 2006, the court denied the following: (1) a
18 "Motion Requesting Court for Correction of Clerical Errors in
19 Docket and Request for Clerk to Properly Process Filed Pro Se
20 Notices of Appeal Docket Numbers, #81 and #82"; (2) a motion to
21 have counsel appointed under 18 U.S.C. § 3006A; (3) a "Motion
22 Requesting Court for an Evidentiary Hearing"; and (4) a petition
23 for writ of habeas corpus. Defendant seeks to appeal this
24 decision.

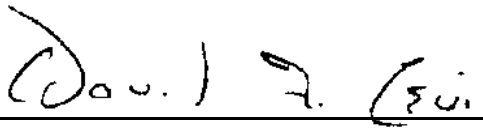
25 Under 28 U.S.C. § 2253 a certificate of appealability is
26 warranted only if the case presents a "substantial question,"

1 one that is "'debatable among jurists of reason,'" could be
2 resolved differently by a different court, or is "'adequate to
3 deserve encouragement to proceed further.'" Jennings v.
4 Woodford, 290 F.3d 1006, 1010 (9th Cir. 2002) (quoting Barefoot
5 v. Estelle, 463 U.S. 880, 893 (1983)).

6 This case presents no such "substantial question" because
7 the habeas petition was successive and there are no "clerical
8 errors" to correct. It is not debatable among jurists of reason
9 that defendant failed to file a notice of appeal or the
10 functional equivalent of a notice of appeal within the applicable
11 time limit. Docket entries #81 and #82 are correct. Defendant's
12 motion for a certificate of appealability is DENIED.

13 IT IS SO ORDERED.

14 Dated: 4/6/2006

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18 DAVID F. LEVI
19 United States District Judge
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